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CMA.No.899 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.899 of 2023

1. D.Santhi
2. Dhasarathan
3. S.Preethi
4. Minor.S.Bhavanya
5. Minor Sharmitha

Appellants

(minor appellants 4 and 5 are represented by
his mother and natural Guardian S.Preethi)

...

vs.

1. Dhewagar Desai
2. The Manager,
New India Assurance Company Limited
No.166, JN Road,
MRN Towers,
Tiruvallur - 602 001.

...

Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 29.09.2022 in M.C.O.P.226/2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Thiruvallur.

For Appellants : Mr.M.L.Ramesh



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For R2 : Mr.P.Sankaranarayanan

J U D G M E N T

The appellants are the claimants in M.C.O.P.226/2019 on the file of the Motor Accident Claims Tribunal, Thiruvallur. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 & Rule 3 of the M.A.C.T. Rules, seeking compensation of Rs.60,00,000/- for the death of one Sankar (son of claimants 1 and 2; wife of claimant 3; father of claimants 4 and 5) in a road accident that occurred on 10.11.2019.

2. The brief case of the claimants is as follows :

On 10.11.2019, Sankar (deceased) was riding his two-wheeler bearing Registration number TN-20-CA-2630 on Seethanjeri-Vellathukottai road. When he was nearing Goonipalayam, a speeding Mahindra van bearing Registration number TN-20-CQ-0679, hit the two wheeler, resulting in the instantaneous death of Sankar.

3. According to the claimants, the rash and negligent driving of the driver of the Mahindra van bearing Registration number TN-20-CQ-0679 was the cause of the accident and that since the said vehicle was insured with the second respondent, the New India Assurance Company



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Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal, the owner of the vehicle remained absent and was set *exparte*. The second respondent, Insurance Company resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal after analysing the evidence on record, vide its orders dated 29.09.2022, fastened negligence on the part of the driver of the Mahindra van. Since the driver of the van did not have a valid driving license on the date of accident, the Tribunal directed the second respondent, Insurance company to pay compensation of Rs.32,54,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, in the first instance and then recover the same from the owner of the van (Pay and Recover).

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act.



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7. Heard Mr.M.L.Ramesh, learned counsel for the appellants,

Mr.P.Sankaranarayanan, learned counsel for the second respondent.

8. Mr.M.L.Ramesh, learned counsel appearing for the appellants contended that Sankar (deceased) aged 31 years on the date of accident, was working in the Production department in a private concern, earning a sum of Rs.20,000/- per month. Though the salary certificate (Ex.P19) was marked, the Tribunal had fixed a meagre sum of Rs.15,000/- as his monthly notional income. He therefore prayed for enhancing the monthly income of the deceased.

9. Per contra Mr.P.Sankaranarayanan, learned counsel appearing for the second respondent contended that the Award passed by the Tribunal is based on well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage.

10. It is seen from the records that the claimants have filed the



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salary certificate (Ex.P19) issued by M/s.DR Enterprise Automotive Private Limited, Thiruvallur to show the income of the deceased. The person who issued the Salary slip, was examined as P.W.3. However, P.W.3 did not adduce any acceptable evidence to show that the deceased was actually receiving salary of Rs.22,550/- as per Ex.P19. In the absence of satisfactory income proof, the Tribunal has fixed the notional monthly income of the deceased as Rs.15,000/-. It is pertinent to point out that the accident took place in the year 2019 and in the facts and circumstances, this Court is of the opinion that fixing notional monthly income of the deceased as Rs.16,000/- would meet the ends of justice. As per the decision of the Supreme Court of India in ***National Insurance Co. vs Pranay sethi and others*** reported in **2017 (2) TNMAC 601**, 40% is added towards future prospects of the deceased. Since there are five dependents, 1/4th is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 16 as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in **(2009) 6 SCC 121**.

Calculation :



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Notional Income = Rs.16,000/-

after adding 40% Future Prospects = Rs.22,400/-

After 1/4 deduction = Rs.16,800/-

Loss of dependency:

= Rs.16,800/- x 12 x 16

= Rs.32,25,600/-

In addition to that the claimants are entitled to Rs.2,00,000/- (40,000/-x5), Rs.15,000/- and Rs.15,000/- towards loss of consortium, loss of estate and funeral expenses respectively as per the decision in ***National Insurance Co. vs Pranay sethi and others*** (cited supra). Thus, the claimants are entitled to a total compensation of Rs.34,55,600/- (32,25,600 + 1,60,000 + 15,000+15,000 = 34,55,600) as shown in the following tabular column:

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
1.	Loss of dependency	Rs. 32,25,600 /-
2.	Loss of consortium (Rs.40,000/- x 5)	Rs.2,00,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.34,55,600/-

11. Thus, the compensation awarded by the Tribunal is



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enhanced to Rs.34,55,600/- that would carry interest at the rate of 7.5% per annum.

12. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced to Rs.34,55,600/-.
- iii. The appellants / claimants are directed to pay court fee for the enhanced compensation amount, if any, within a period of four weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.
- iv. The second respondent, New India Assurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.34,55,600/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order / uploading of this order to the credit of M.C.O.P.226/2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Thiruvallur in the first



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instance and then recover the same from the owner of the van (Pay & Recover).

v. Apportionment :

first and second claimants/ Parents	Rs.2,00,000/- each
third claimant / wife	Rs.10,55,600/- (with interest and costs)
fourth and fifth claimants/ children	Rs.10,00,000/- each

vi. The share of the minor appellants is directed to be deposited in any one of the Nationalised Bank till they attain majority. The claimants 1 to 3 are at liberty to withdraw their respective shares after following due process of law.

14.10.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes / No
vum

To

1.The Motor Accidents Claims Tribunal,
Special District Court,
Thiruvallur.

2.The Section Officer, VR Section,
Madras High Court, Chennai.



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R.HEMALATHA, J.

vum

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